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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1958.

No. 941

JOSEPHINE DAVIDITIS, also known as **JOSEPHINE DAVIS, STELLA C. DAVIS**, and **BETTY HORRIGAN**,

Petitioners,

vs.

THE NATIONAL BANK OF MATTOON, Mattoon, Illinois, a banking corporation,

Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

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vs.

THE NATIONAL BANK OF MATTOON, Mattoon, Illinois, a banking corporation,

Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

To The Honorable Earl Warren, Chief Justice, and Associate Justices of the Supreme Court of the United States.

Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Petitioners, Pro Se, prays that a Writ of Certiorari issue to review the Order of The United States Court of Appeals for the Seventh Circuit entered on January 22, 1958, affirming the Orders of the District Court for the Eastern Distgict of Illinois, and asserts the following:

REPORTS OF OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is set forth in an appendix "A" hereto.

The United States District Court of the Eastern District of Illinois, being the trial court below, which dismissed the plaintiff's complaint and denied their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support, issued no written opinions.

JURISDICTION.

The judgment of the District Court was entered on June 3, 1957 (R. 84-87) and on July 5, 1957, said court entered an Order denying their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support thereto (R. 97-98) and that their cause dismissed shall stand.

On July 19, 1957, plaintiffs filed their Notice of Appeal, and on September 23, 1957, filed their Appendix and Brief for the Appellants in the United States Court of Appeals, Seventh Circuit. On January 22, 1958, The Court of Appeals affirmed the Judgment of the District Court, and Honorable Parkinson, Circuit Judge filed his opinion.

This petition is filed within ninety days from entry of judgment on appeal, affirming judgment and dismissal of their complaint, and accordingly the jurisdiction of this Court to review the Order of the United States Court of Appeals, Seventh Circuit by a Writ of Certiorari is invoked under Title 28 U.S.C. sections 1254 (1) (3) and

Part V, Rule 19(1) (b) of the Revised Rules of the Supreme Court of the United States, U.S.C. 28 sec. 1331, U.S.C. 12 sec. 1818, Title 28 U.S.C. Rule 56, 1895, and U.S. Constitution, Amendment XIV sec. 1, Amendment IV, Article IV sections 1 and 2 and Article VII, see Bradly, 7 Wall. 364, 19 L. Ed. 214, December 1868. *In Re Quarles*, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080, *Carrol* v. *U. S.*, 267, 132, Ex Parte Virginia 100 U.S. 346-F and U.S.C. Title 5 sec. 139 E & F, *Rosenblum* v. *Rosenblum*, 1943-42 New York, 52 d, 626, 181 Misc. 78, *Wilbur* v. *Ford*, D.C. Mass, 1949, 81 F. Supp. 641.

QUESTIONS PRESENTED.

This case involves an action for damages resulting from FRAUD upon the petitioners by the National Bank of Mattoon, a banking corporation, invoked under 28 U.S.C. section 1331, and violations of the National Banking Act in contravention with the provisions of the Probate Act of Illinois.

The questions presented in this petition are set heretofore: whether a Trial Court commits reversible error in dismissing Complaint and entering judgment and the Court of Appeals affirms the judgment and dismissal when:

A. The Courts below have decided important questions of federal law, which has not been, but which should be settled by this court, and have so far departed from the accepted and usual course of judicial proceedings by deciding issues of fact presented which substantially and directly affect the Constitutional and Civil Rights and privileges granted under the Constitution of the United States in the following manner:

1. The charges of FRAUD as such set forth is a denial of "Due Process of the Law" and violations of the XIVth Amendment to the Constitution.

2. The averments of the claim for relief do show real and substantial federal questions as evidenced by the EXHIBITS and with Supporting Affidavits to bring the action within sec. 1331 U.S.C. 28.

3. That petitioners complained to the Federal Bureau of Investigation in regard to the respondent, The National Bank of Mattoon, its officials and other named persons in their Complaint and pleadings. "It is the Right of Every Private Citizen of the United States to Inform an F.B.I. Agent, Treasury Agent, etc. of Violation of Internal Revenue Laws or other U.S. Laws under Rule 56 of U.S.C. Title 28, and this right is secured by the Constitution of the U. S." This act alone created a "Conflict of Interest" between the petitioners, and respondent, The National Bank of Mattoon, and the United States officers and employees, who aided them in this act wherein there was supposed to exist a Fiduciary Relationship and which has been ignored both by the Trial Court and the Court of Appeals for the Seventh Circuit.

4. Both the Trial Court and the Court of Appeals overlooked "Unlawful Searches" permitted by the respondent and its so-called attorneys who may violate the 4th Amendment to the U.S. Constitution made by Subterfuge or Fraud rather than by force.

5. "Wilfull" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13, imposing a Penalty on National Bank officers or agents on wilful violations of the Law implies a knowledge and a purpose to do wrong whereas evidence contained in the petitioner's Exhibits and statements in their Affidavits in regard to this knowledge on the part of the respondent was ignored by both the Trial Court and the Court of Appeals.

6. The Federal District Court was vested with jurisdiction of suit seeking Redress for Deprivation of Civil Rights guaranteed by the XIVth amendment to the Constitution regardless of Citizenship or amount in Controversy which was ignored by both the Trial Court and the Court of Appeals for the Seventh Circuit.

7. While National Banks are deemed "Citizens" of state where located for purpose of Federal Jurisdiction and no jurisdiction attaches by reason of their creation by National Laws, yet when a "Right" is asserted by a National Bank under authority of the Law of its creation, the determination of such a Right involves a Federal Question of which a Federal District Court has jurisdiction without regard to citizenship if the requisite amount is involved.

8. The Trial Court denied the petitioners' request for an attorney filed by a Motion in said court wherein petitioners gave reasons that they could not get an attorney to represent them anywhere because of the fraud, deceit, conspiracy and false representation of the respondent and its attorneys of which several were "Officers of the United States" and Justice Department whereas their actions could not be prosecuted under State Law of which they were immune as federal men and the National Bank asserted a "federal right" under the authority of its creation but still taking advantage of the "Probate Act of Illinois" whereas the respondent and its attorneys inveigled themselves into a position to further oppress, threaten and intimidate the petitioners in the free exercise of their rights under the constitution, statutes and laws of the United States and of the State of Illinois, and by this action rendered the petitioners legally helpless and in a virtual state of anarchy although respondents were clothed in laws of democracy. This involves federal questions which are vital to Public Interest throughout the United States of America.

STATEMENT OF CASE.

This action was brought under U.S.C. Title 28 section 1331, for judgment for Damages Resulting From Fraud against the respondent, The National Bank of Mattoon, a banking corporation.

The petitioners complained to the Federal Bureau of Investigation in the year of 1950, and thereafter about the National Bank of Mattoon, its officials and others mentioned in their Complaint and pleadings. That as the result of these complaints, the petitioner, Stella C. Davis, was advised by an F.B.I. agent of the Springfield, Illinois, office to see a U. S. Attorney, or his assistant, of which one Ray M. Foreman, a federal attorney in Danville, Illinois was recommended.

That on December 9, 1950, the petitioner, Stella C. Davis, went to Danville, Illinois, and saw, Ray M. Foreman, in his official position as an Assistant U. S. Attorney, and from that date on, and via U. S. Mails, and Federal Communications, he entered into a conspiracy and fraud to eventually get the respondent, The National Bank of Mattoon, as administrator, himself as its attorney, as well as his associates, and by deceit and fraud use the petitioners to help him achieve this position.

That on April 2, 1951, Ray M. Foreman, together with Kenneth Clapper, embezzled the legal file and detective's report from the petitioners in their hotel room in the U.S. Grant Hotel, Mattoon, Illinois, on the assumption of legal protection and governmental investigation of their complaints.

That on the 3rd day of April, 1951, it being the day of the funeral of the petitioner's father and husband, he, Ray M. Foreman, together with Kenneth Clapper, Elizabeth McVey, E. C. Bauer and Martin Behrend and others in the National Bank of Mattoon conspired and perpetrated a Fraud upon petitioners by causing:

1. The decedent's safety deposit box No. 932 to be opened, inventoried without the "due process and protection" of the laws, federal and State.

2. Made Illegal Searches of the assets of the deceased both in the National Bank of Mattoon, and other business institutions in the City of Mattoon, Illinois.

3. Ray M. Foreman, illegally obtained the P.O. box key 212 and entered said post office box to make unlawful searches of the deceased's mails and assets.

4. Ray M. Foreman, Assistant U. S. Attorney, together with Kenneth Clapper, Elizabeth McVey, E. C. Bauer and Martin Behrend conspired and perpetrated a fraud upon the petitioners by causing a fraudulent Petition of Letters of Administration to be drafted, filed together with a fraudulent acknowledgment by Elizabeth McVey annexed thereto and made a part of the records of the Coles County Probate Court, together with the National Bank of Mattoon, becoming Administrator, by Fraud, and Ray M. Foreman, unbeknown to petitioners at the time, its attorney and at the same time making false representations to petitioners and misrepresenting his federal position to them by making claims of governmental investigations etc. on their behalf as well as on behalf of the government.

That on April 3, 1951, the Hearing allegedly held in the Court of Coles County, Illinois was a Fraud, and violation of the Civil Practice Act of Illinois inasmuch as there was no "Notice" of this alleged hearing to petitioners, nor was there a Waiver of Notice on file in said court by peti-

tioners or widow regarding this hearing or attendance of same.

That the National Bank of Mattoon was involved with irregular, if not criminal proceedings together with an Assistant State's attorney, Ralph Suddes and others in a fraudulent City Court Action No. 49-C-50 Mattoon, Illinois (R. 20-24, 25, 73) in the year 1949, wherein they together with the deceased were defendants, and the widow, plaintiff.

Due to the "Conflict of Interest" between the widow, petitioners, heirs-at-law and the respondent, The National Bank of Mattoon, there was continuous antagonism and strife. That the petitioners who informed to the F.B.I. about the bank were treated with contempt by the bank officials and the attorneys and others mentioned in their Complaint and pleadings and threatened by bank officials.

ARGUMENT.

I.

The Federal District Court was vested with jurisdiction of suit seeking redress for deprivation of Civil Rights guaranteed by the United States Constitution, Amendment 14, regardless of diversity of Citizenship or amount in controversy.

This action involves "Officers of the U.S. representing a National Bank which is subject to the paramount authority of the United States. These federal men under a salary of the government, were also getting an outside salary from an Estate wherein the bank came in as Administrator by Conspiracy and Fraud instigated by the defendant-appellee, Ray M. Foreman, Assistant U. S. Attorney, aided by Kenneth Clapper, and at a later date by Clyde Meachum, U.S. Referee in Bankruptcy.

There was a "Conflict of Interest" between the widow of the decedent (Tr. p. 69), the heirs-at-law and the National Bank of Mattoon, Illinois in 1949 and 1950 prior to the death of William Daviditis, alias William Davis (Tr. pp. 16-18) and in view of such conflict of interest it fraudulently became the administrator of the estate of the decedent, whereas they had formerly been Trustees in a fraudulent Separate Maintenance Action in the City Court of Mattoon, Mattoon, Illinois, 49-C-59 (Tr. p. 76) wherein they were defendants with the decedent and the widow, plaintiff. (Tr. p. 58). Bradley, 7 Wall. 364, 19 L. Ed. December 1868, and *Cummins* v. *U. S.*, Ark. 1916, 232, F. 844, 147 C.C.A. 38.

Under U.S.C. 12, sec. 248 (K) the bank is given the right to act as administrator, etc. and they are not required to execute bonds under the Probate Act of Illinois. We submit that this Rev. Stat. Chapter 3, sec. 335 and Rev. Stat. Chapter 3 sec. 299 to recover property and discover information regarding same is in contravention of the law under U.S.C. Title 12, sec. 248, and unconstitutional when it gives an administrator, trustee, etc. who is clothed under the Federal and State power and who is in direct conflict with the rights and interest of the heirs and widow of the decedent, and who usurps that power to refuse access under the law to the decedent's dealings, financial and otherwise, and who is being accused of fraud and conspiracy and other misapplications and violations of the National Banking Act is in a position to forevermore deny them of access to the confidential records of all trusteeships, conservatorships, etc. which the bank had prior to the death of William Daviditis, alias William Davis, thereby being in direct conflict of the appellants' interest when there was prior adverse litigation and the bank was the defendant together with the decedent and the widow the plaintiff. (Tr. pp. 7, 11, 12).

The appellee, Ray M. Foreman, together with Kenneth Clapper and Elizabeth McVey, aided by E. C. Bauer, caused a fraudulent petition for letters of administration issued, with a fraudulent acknowledgment affixed to same by Elizabeth McVey. Ill. Rev. Chpt. 38, sec 321 and 322. No hearing was had as far as the heirs and widow were concerned and no notice of this alleged hearing served upon them, neither did they waive this right in writing according to the Probate Law. Illegal Searches by the appellees, Ray M. Foreman and Kenneth Clapper, and getting access into the safety deposit box No. 932 of the decedent without the "Due Process of the Law" on a federal working day and no protection of the rights of

the heirs and widow. *Colorado Nat'l Bank of Denver* v. *Bedfore*, Colo. 1940.

Potter v. *U. S.*, 155, 438, 15 S. Ct. 144, 39 L. Ed. 214, and *Carroll* v. *U. S.*, 267 U.S. 132. Unlawful Search may violate the 4th Amendment to the Constitution by Subterfuge or Fraud. Bradley, 7 Wall. 364, 19 L. Ed. 214, December 1868. *Whitlock* v. *McClusky*, 91 Ill. 582.

II.

It is the right of every private citizen of the United States to inform an F.B.I. Agent, Treasury Agent, etc. of Violation of Internal Revenue Laws or other United States Laws under Rule 56 of U.S.C., Title 28.

In Re Quarles, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080. The appellants did inform the F.B.I. on the National Bank of Mattoon, Mattoon, Illinois and its official, employee, and others. That as the result of such information and disclosure they were oppressed, threatened and intimidated, and more so by the defandant-appellee, Ray M. Foreman, U.S. Assistant Attorney involved as an attorney for the National Bank of Mattoon in their late father's and husband's estate due to the prior conflicts of interests. This right to inform is secured by the Constitution and a conspiracy to injure, oppress, threaten or intimidate them in the free exercise or enjoyment of this right, or because of their having exercised it may be punishable by an "Act of Congress". (Tr. pp. 4, 34, 35, 41, 46, 52).

III.

Where existence of fiduciary relationship has been established. Law presumes that transactions between parties by which dominant party has profited are fraudulent.

Stephenson v. *Kidechek*, 919 N.E. 542, 410 Ill. 139.

IV.

In the absence of counter-affidavits averments contained in the affidavits and supported by Exhibits by the Plaintiffs in support of their Reply Brief must be taken as true.

Leitch v. *Hine*, 393 Ill. 211, 218.
Brandt v. *St. Paul Mercury Indemnity Co.*, 285 Ill. 212, 217.

V.

"Wilful" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13, imposing a penalty on a National Bank Officer or agent on wilful violations of the law implies a knowledge and purpose to do wrong. (Tr. 18-23, 73, 11-17)

Prescott v. *Haughey*, C.C. in 18956 S. F. 569.

VI.

Rule 9, Civil Rules of Federal Procedure. "Under this rule requiring that averments of Fraud be stated with Particularity complaint alleging Fraud was not subject to Objection that it contained redundant, immaterial, impertinent or scandalous allegations.

Israel v. *Alexander*, D.C. N.Y. 1942 50 F. Supp.

VII.

That the appellants petitioned the Court for an attorney and were denied same in Court and in Court they made an Oral Motion to transfer their cause of action to the Criminal Side of the Docket and were denied this, too.

CONCLUSION.

It is respectfully submitted that the decision of the United States Court of Appeals for the Seventh Circuit should be reversed and the cause of action be remanded to the District Court for the Eastern District of Illinois for a trial by jury for evidence, witnesses and facts to be presented in said court by the appellants and that public interest requires review of "conflict of interest" cases and wherein informers rights, immunity and privileges were jeopardized by the respondents and other persons named in their pleadings and informed about to the Federal Bureau of Investigation.

Respectfully submitted,

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(Opinion)

In oral argument before this court the plaintiffs contend that the District Court had jurisdiction because their civil rights were violated and the defendant violated the National Banking Laws.

The complaint is such a gallimaufry that it is impossible to determine any theory upon which it declares. It appears to attempt to allege fraud on the part of the defendant in opening a lock box of decedent, William Daviditis, alias William Davis, and in being appointed administrator of and in administering his estate in the Coles County Probate Court of Illinois. Absolutely no facts are pleaded showing a federal question present pursuant to Title 28 U.S.C.A. sec. 1331 or a violation of civil rights which would confer jurisdiction on a federal court. Title 12 U.S.C.A. sec. 1818 provides for termination of status as an insured bank by the Board of Directors of the Federal Deposit Insurance Corporation and has no application here whatsoever.

The District Court was correct in dismissing the complaint for lack of jurisdiction of the subject matter and the judgment is Affirmed.

A true Copy:

Teste

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
For The Seventh Circuit
No. 12112—September Term 1957—January Session 1958
Josephine Daviditis, also known as
Josephine Davis, Stella C. Davis
and Betty Horrigan,
Plaintiffs-Appellants
v.
The National Bank of Mattoon,
Mattoon, Illinois, a Banking Corporation,
Defendant-Appellee.
Appeal from the United States District Court
for the Eastern District of Illinois

January 22, 1958.

Before MAJOR, FINNEGAN and PARKINSON, Circuit Judges.

PARKINSON, Circuit Judge. The plaintiffs, pro se filed a complaint in the District Court for the Eastern District of Illinois asserting "Jurisdiction In This Cause is Based On Title 28, Section 1331 of The U. S. Code" and alleging therein that the "allegations were violations of Title 12 U.S.C. section 1818-unsound practices and violations of the National Bank Act."

The complaint alleges that the plaintiffs are residents